

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

IN RE: . Case No. 15-08397-RLM-7  
. .  
. .  
TOCON HOLDINGS, LLC, . 116 U.S. Courthouse  
. 46 East Ohio Street  
. Indianapolis, IN 46204  
. .  
Debtor. . December 16, 2015  
. . 9:29 a.m.  
. . . . .

TRANSCRIPT OF CONTINUED HEARING ON CREDITORS RITA CHAIREZ,  
AMOS HOSTETLER, DEBBIE HOSTETLER, BECKY NULL, AND MARIA  
TOVAR'S MOTION TO DISMISS WITH AN OBJECTION FILED BY THE  
TRUSTEE, THE DEBTOR, AND CREDITOR JOHNSON CONTROLS, INC.;  
BRIEF IN SUPPORT FILED BY CREDITOR  
BEFORE HONORABLE ROBYN L. MOBERLY  
UNITED STATES BANKRUPTCY COURT CHIEF JUDGE

APPEARANCES:

For the Debtor: Frank Law, LLC  
By: L. LEONA FRANK, ESQ.  
155 East Market Street, Suite 860  
Indianapolis, IN 46204

For the Chapter 7 Rubin & Levin, P.C.  
Trustee, Jenice By: JAMES T. YOUNG, ESQ.  
Golson-Dunlap: AMY B. BAKER, ESQ.  
500 Marott Center  
342 Massachusetts Avenue  
Indianapolis, IN 46204

For Creditors Amos Taft, Stettinius & Hollister, LLP  
Hostetler, Rita Chairez, By: THOMAS A. BARNARD, ESQ.  
Becky Null, Debbie RODNEY L. MICHAEL, JR., ESQ.  
Hostetler, Maria Tovar: MICHAEL P. O'NEIL, ESQ.  
One Indiana Square, Suite 3500  
Indianapolis, IN 46204

Audio Operator: Marcella Lockert

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J&J COURT TRANSCRIBERS, INC.  
268 Evergreen Avenue  
Hamilton, New Jersey 08619  
E-mail: jjcourt@jjcourt.com

(609) 586-2311 Fax No. (609) 587-3599

## APPEARANCES (Cont'd):

For Johnson Controls,  
Inc.:

Barnes & Thornburg, LLP  
By: KELLY J. HARTZLER, ESQ.  
700 1st Source Bank Center  
100 North Michigan  
South Bend, IN 46601

Chadbourn & Parke, LLP  
By: THOMAS J. HALL, SR., ESQ.  
1301 Avenue of the Americas  
New York, NY 10019

## TELEPHONIC APPEARANCES:

For First Federal  
Savings Bank:

DeLaney, Hartburg, Roth & Garrott, LLP  
By: ADRIAN LEE HALVERSTADT, III, ESQ.  
533 Warren Street  
Huntington, IN 46750

- - -

1 representatives from Johnson Controls. On that date we entered  
2 through the east portion of the building. We walked through  
3 the main facility, so we headed west through the facility.

4 Q Okay. May I stop you a second here so we can --

5 A Yes.

6 Q -- make a record and identify where you are. You were  
7 pointing out the area outlined in orange on Plaintiff's Exhibit  
8 35, correct?

9 A Correct.

10 Q Okay. Did you observe any asbestos in that part of the  
11 property?

12 A Yes. Prior to completing the walk-through with the  
13 contractors we had been provided with a copy of the asbestos  
14 report. I had reviewed it prior to that time. And so as we  
15 walked through the facility that day we also noted to the  
16 contractors we were with you know the different areas that were  
17 visible that had been in the report.

18 Q About how much asbestos did you observe in the area  
19 outlined in orange on Plaintiff's Exhibit 35?

20 A At that point, very little asbestos had been abated. The  
21 building was still intact. The current property owners had not  
22 yet started demolition or substantial demolition to the  
23 facility. So a majority of the asbestos was there and the  
24 report had indicated that all of the (indiscernible) and  
25 asbestos piping, I think those are all intact at that point in

1 time. So it was very visible throughout the walk-through.

2 Q All right, so I understand. So when you did your walk-  
3 through the wrap, asbestos wrapping was still on the pipes in  
4 the area outlined in orange on Plaintiff's Exhibit 35?

5 A Yes.

6 Q Okay. And had you noticed any abatement done in that area  
7 at all of asbestos?

8 A No proper asbestos abatement had been completed. There  
9 were areas where we saw materials lying on the grounds, pipes,  
10 et cetera, but the property owners it appeared were starting to  
11 scrap some of the materials from the building. Workers had  
12 been in there (indiscernible) and it was on the ground, but it  
13 wasn't substantial abatement yet.

14 Q Was it asbestos that was lying on the ground?

15 A It appeared to be, yes.

16 Q Were the workers wearing any kind of protection?

17 A Yes.

18 Q Okay. After you inspected the orange part of the property  
19 where did you go next?

20 A After walking through the main portion of the building we  
21 did enter into the administration building. It's the office  
22 area of the building that's been marked. We walked through the  
23 various floors that were in that portion of the building, noted  
24 all of the different areas that needed to be demolished,  
25 abated, and that type of thing. From there we left the office

1 --

2 Q Let me stop you again so we --

3 A Okay.

4 Q -- can make our record. So you pointed to the building on  
5 the north part of the property outlined in red on Plaintiff's  
6 Exhibit 35 that's light in color as the administration  
7 building?

8 A Correct.

9 Q Okay. Did you observe asbestos in that building?

10 A Yes.

11 Q Did you observe -- how much asbestos did you observe in  
12 that building?

13 A Based on the 2006 asbestos survey report nearly all of the  
14 flooring, the ceiling tiles, there was window glazing, there  
15 were pipes that they had wrapped. So there was a substantial  
16 amount of asbestos impact in that area.

17 Q Okay. And now you continue the tour.

18 A From there we went to the west to the engineering building  
19 and walked through both floors of that facility. The upstairs  
20 and the lower portion were (indiscernible) system was.

21 Q Okay. And that for the record is the building on the  
22 northwest corner that's outlined in red on Plaintiff's Exhibit  
23 35?

24 A Yes.

25 Q Did you observe asbestos in that building?

1 A Yes. Everything in that building appeared to be intact at  
2 that point in time. It had appeared that people had started  
3 breaking into the main building, windows were broken,  
4 (indiscernible) but things were primarily intact within that  
5 facility.

6 Q How much asbestos did you observe in the engineering  
7 building?

8 A There was a lot of pipe wrapped and (indiscernible) things  
9 of that nature within that building (indiscernible).

10 Q Okay. And then after you toured the engineering building  
11 where did you go next?

12 A After the engineering building we went south and continued  
13 our tour throughout the main facility.

14 Q And that's the plant, the part of the plant that's  
15 outlined in yellow on Plaintiff's Exhibit 35?

16 A Yes.

17 Q And what did you see there?

18 A At that point the building was primarily intact, nothing  
19 was substantially disturbed at that point in time. Everything  
20 that was in the 2006 report seemed to be accurate.

21 Q Was there asbestos in that part of the building?

22 A Yes.

23 Q Okay. And after that part of the building where did you  
24 go?

25 A The last area we walked through was the area to the east

1 of the facility. We toured that area before (indiscernible).

2 Q And did you notice any asbestos in that area of the  
3 building?

4 A Yes. Again there were pipes and things with the wrapping  
5 that had been noted in the 2006 report.

6 Q At some point after your tour were the buildings  
7 demolished?

8 A Yes. In 2012 the City staff was notified that demolition  
9 activities had occurred, and we had not received proper  
10 notification regarding those activities. They did not have  
11 building permits nor had they submitted the necessary  
12 notifications to get clearance. And so we had stopped work at  
13 that time, we gave them a stop work order until they did  
14 provide the necessary information for the portion of the  
15 building which was the southeast portion that came down first.

16 Q Okay. You can go ahead and sit down because we're done  
17 with the map. Do you believe that all of the asbestos was  
18 abated before the buildings had been demolished?

19 A No.

20 Q And why not?

21 A We know that they had abated the southeast corner.  
22 There's also documentation that was submitted to IDEM that they  
23 had abated the main portion of the building highlighted in  
24 yellow on the exhibit. Beyond that there has never been any  
25 kind of documentation submitted to IDEM within the virtual file

1 cabinet.

2 To our knowledge no proof has ever been provided to  
3 the City that it was handled properly. We have never seen the  
4 contractors on the site removing those materials prior to  
5 demolition activities occurring.

6 Q And did the City watch the site?

7 A We have several City staff that continue to watch the site  
8 frequently. It's a very visible site within the City of  
9 Goshen. Residents consistently call in and complain about this  
10 site. Our Mayor's Office gets called frequently about this  
11 site. And so we have several members of our staff that drive  
12 by frequently, keep an eye on things, and notify us if  
13 anything's happening on the property.

14 Q Did any of those members of your staff ever observe any  
15 asbestos removal from the two buildings on the north part of  
16 the property before they were demolished?

17 A No.

18 MR. HALL: Objection, Your Honor, calls for hearsay.

19 A No.

20 THE COURT: Sustained.

21 Q Have you overseen asbestos abatement at other buildings?

22 A Yes.

23 Q Does it require water and electricity?

24 A Yes.

25 Q Was there any water or electricity available at the site



1 that's the subject of today's hearing when the two northern  
2 buildings were demolished?

3 A No. To our knowledge there's no electricity to this  
4 property. Water has been turned off. And we have no record of  
5 anyone ever using a meter or using water from the City to  
6 complete any activities of that nature.

7 Q So based on your experience as the Brownfield Coordinator  
8 would it be possible to properly abate asbestos from those  
9 buildings without water?

10 MR. HALL: Objection, Your Honor, calls for expert  
11 testimony.

12 THE COURT: Sustained.

13 MR. MICHAEL: I think I can lay the -- may I have an  
14 opportunity to lay the foundation?

15 Q You have overseen asbestos abatement at other sites,  
16 correct?

17 A Correct.

18 Q What is one of the first things that has to be done before  
19 you can start to abate asbestos at the site?

20 A Water is needed --

21 MR. HALL: Objection, Your Honor, calls for expert  
22 testimony.

23 A -- to wet the asbestos to keep it moist.

24 THE COURT: The issue in my mind is, does she know  
25 the universe of information about asbestos remediation? I

1 would guess not. She's observed some. Has she observed enough  
2 quantity to be able to definitively say there are no other ways  
3 to remediate. So I'll sustain the objection.

4 Q Based on your experience at other sites as the Brownfield  
5 Coordinator of Goshen, does the City of Goshen believe that  
6 there is asbestos in the debris piles at the property?

7 A Yes.

8 Q Have you reported the City of Goshen's concerns with the  
9 property?

10 A Yes.

11 Q And when was that?

12 A There have been several points in time over the last  
13 several years where we have had contact with IDEM asbestos  
14 inspectors, both in Indianapolis and our region's  
15 representatives indicating that we had concern. They had gone  
16 to the site when we had originally stopped work on the site and  
17 taken samples themselves to confirm that there was asbestos on  
18 site. They had received the initial --

19 MR. HALL: Objection, Your Honor. I'll move to  
20 strike. She's testifying about what somebody else did.

21 THE COURT: Is she supervising them?

22 THE WITNESS: No. We received notification from  
23 IDEM. They touched base with us.

24 THE COURT: Sustain the objection.

25 MR. MICHAEL: May I approach the witness, Your Honor?